24.

# SUPREME COURT OF THE UNITED STATES.

## No. 70.

JOHN A. ROWAN AND JOHN L. HARRIS, CO-PARTNERS IN TRADE, UNDER THE NAME AND STYLE OF ROWAN AND HARRIS, PLAINTIFFS IN ERROR,

VS.

HIRAM G. RUNNELS, DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

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J. & G. S. GIDEON, Printers.

ROWAN AND HARRIS
vs.
H. G. RUNNELS.

Pleas before the honorable John McKinley, presiding judge of the circuit court of the United States, at a circuit court of the United States in and for the ninth circuit and southern district of Mississippi, held at the town of Jackson, at the May term, in the year of our Lord one thousand eight hundred and forty-two.

Be it remembered that heretofore, to wit, on the 11th day of April, A. D. 1840, the following writ of summons ad respondendum issued out of the clerk's office of the court aforesaid, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
*Southern district of Mississippi.*

The President of the United States to the marshal of the southern district of Mississippi, greeting:

We command you, without delay, to summon Hiram G. Runnels, who is a citizen of the State of Mississippi, that he be and appear at the circuit court of the United States, to be held at the city of Jackson, in and for the southern district of Mississippi, on the first Monday of May next, to answer to John A. Rowan and John L. Harris, copartners in trade under the firm of "Rowan and Harris," who are citizens of the State of Virginia, of a plea of trespass on the case to their damage thirty-five hundred dollars, and that he do file his plea or defence with the clerk of said court, or judgment will be given against him by default; and have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, the 11th day of April, A. D. 1840, [L. S.] and in 64th year of the independence of the United States.

WILLIAM BURNS, *Clk.*

Marshal's return. Executed personally on the 13th April, 1840.

WM. M. GWIN, *Marshal,*
Pr. F. S. HUNT, *Dep.*

And on the said 11th day of April, A. D. 1840, the plaintiffs aforesaid, by Harrison and Holt, their attorneys, filed their declaration herein against the said defendant, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
*Southern district of Mississippi.*

United States circuit court, ninth judicial circuit. May term, in the year 1840.

John A. Rowan and John L. Harris, copartners in trade under the name and style of Rowan and Harris, who are citizens of the State of

Virginia, plaintiffs in this suit, complain of Hiram G. Runnels, who is a citizen of the State of Mississippi, defendant in custody, &c., of a plea of trespass on the case upon promises, for that, whereas the said defendant, by the name and signature of H. G. Runnels, heretofore, to wit, on the 27th day of March, in the year of our Lord one thousand eight hundred and thirty-nine, at Jackson, to wit, in the southern district of Mississippi aforesaid, made his certain promissory note in writing, bearing date the day and year aforesaid, and then and there delivered the said promissory note to the said plaintiffs, and thereby then and there promised to pay on the first day of March, 1840, to the said plaintiffs, by the name of Rowan and Harris, or order, without plea or offset, two thousand nine hundred and fifty dollars and seventy cents, (written two thousand nine hundred and fifty $\frac{70}{100}$ dollars,) negotiable and payable at the Mississippi Union Bank at Jackson, value received, (written "nego. and payable at the Miss. Union Bank at Jackson, value rec'd,") by means whereof the said defendants then and there became liable to pay the said plaintiffs the said sum of money in the said promissory note specified, according to the tenor and effect of said note, and being so liable, he, the said defendant, in consideration thereof, afterwards, to wit, on the day and year aforesaid, undertook and then and there faithfully promised the said plaintiffs to pay them the said sum of money in the said note specified, according to the tenor and effect thereof.

Yet the said defendant, not regarding his said promise and undertaking, hath not as yet paid the said plaintiffs the said sum of money, or any part thereof, (although often requested so to do.) But to pay the same, or any part thereof, to the said plaintiffs, the said defendant hath hitherto wholly failed and refused, and still doth refuse so to do, to the damage of the said plaintiffs of thirty-five hundred dollars, and therefore they bring their suit, &c.

HARRISON & HOLT, *Plaintiff's attorneys.*

*Copy of note sued on.*

$2,950 70. JACKSON, *March 27th*, 1839.

On the first day of March, 1840, I promise to pay Rowan and Harris, or order, without plea or offset, nego. and payable at the Miss. Union Bank at Jackson, two thousand nine hundred and fifty and $\frac{70}{100}$ dollars, value received.

H. G. RUNNELS.

And the said defendant, by attorneys, comes and defends the wrong and injury, when, &c. and for plea says, actior non, because he says he did not undertake and promise, in manner and form, as the plaintiffs in declaration have alleged; and of this he puts himself upon the country, &c. RUCKS & YERGERS, *Atto's.*

And the plaintiffs do the like.

HARRISON & HOLT, *Att'ys.*

And afterwards, to wit, at the said May term of the court aforesaid, to wit, on the twenty-eighth day of May, in the year of our Lord one thousand eight hundred and forty-two, until which time this cause was regularly continued, came the parties aforesaid, by their respective attorneys, and a jury being called, came, to wit: John W. Wyatt, Wm. Boil, Jno. E. Summers, J. M. Lewis, Jno. F. Scott, J. Richards, Jas. Wade, Aaron Farman, Jno. Lear, M. Craft, James Caruthers, Wm. Miller, who being empannelled, tried, and sworn the truth to speak upon the issues joined, say upon their oaths that the said defendant did not undertake and promise, as the plaintiffs in their declaration hath alleged.

Bill of exceptions tendered by the plaintiffs.

Be it remembered, that on the trial of the above case, the plaintiffs read in evidence to the jury the note sued on, which is in the words and figures following, to wit:

$2,950 70 JACKSON, *March 27th*, 1839.

On the first day of March, 1840, I promise to pay Rowan and Harris, or order, without plea or offset, nego. and payable at the Miss. Union Bank at Jackson, two thousand nine hundred and fifty $\frac{70}{100}$ dollars, value rec'd. H. G. RUNNELS.

The defendant then read in evidence to the jury, an authenticated transcript of the record of a suit pending in the superior court of chancery of the State of Mississippi, wherein Rowan & Harris are complainants, and George W. Adams, Hiram G. Runnels, and others, are defendants, which transcript is in the words and figures following, to wit:

ROWAN & HARRIS
vs.
GEORGE W. ADAMS,
HIRAM G. RUNNELS. } 2,123.

Superior Court of Chancery of the State of Mississippi, at Jackson. Pleas and proceedings before the honorable Robert H. Buckner, chancellor of the State of Mississippi.

Be it remembered, that heretofore, to wit, on the 9th day of April, A. D. 1841, came the complainants, John A. Rowan and John L. Harris, by their solicitors, Harrison and Holt, and filed in the clerk's office of said court their bill of complaint against the defendants, George W. Adams and Hiram G. Runnels, which bill of complaint is in the words and figures, and of the tenor following, to wit:

To the honorable Robert H. Buckner, chancellor of the State of Mississippi, your orators, John A. Rowan and John L. Harris, copartners in business, under the name and style of "Rowan and Harris," humbly complaining, show unto your honor that one George W. Adams, who is a citizen of the State of Kentucky, was, on the 7th day of December, 1837, justly indebted to Hiram G. Runnels in the sum of twenty-six thousand and thirty-four dollars, and being so indebted, on that day

made and delivered, in consideration of said indebtedness to the said Runnels, his three several promissory notes, each being for the sum of eight thousand six hundred and seventy-one $33\frac{1}{100}$ dollars, each of which notes was made payable to the said Runnels, was dated on the 7th day of December, 1837, and fell due—the first on the 1st day of March, 1839, the second on the 1st day of March, 1840, and the third on the 1st day of March, 1841. Your orators further state, that the said George W. Adams being desirous of securing to the said Runnels the prompt and punctual payment of said notes, at maturity, on the same day conveyed in mortgage, for the purpose aforesaid, to the said Hiram G. Runnels, the following described tracts of land, situate in the county of Bolivar and State of Mississippi, to wit: "all those lots and parcels of land contained within township No. twenty-two, range nine, west, and known and described as follows: lot No. two, in section No. two, containing $78\frac{81}{100}$ acres; lot No. 3, in section No. two, containing eighty-four $\frac{85}{100}$ acres; lot No. six, in section No. two, containing seventy-five $\frac{89}{100}$ acres; and lot No. seven, in section No. two, containing seventy-six $\frac{10}{100}$ acres; and lot No. 8, in section No. two, containing seventy-six $\frac{10}{100}$ acres; lot No. five, in section No. three, containing seventy-seven acres; lot No. six, in section No. three, containing seventy-seven acres; lot No. seven, in section No. three, containing seventy-seven acres; lot No. eight, in section No. three, containing seventy-seven acres. Also, section No. four, containing six hundred and forty-eight $\frac{16}{100}$ acres, and fractional section eleven, containing twenty-one $\frac{67}{100}$ acres, and fractional section No. ten, containing twelve $\frac{50}{100}$ acres, and fractional section twelve, containing four hundred and ninety $\frac{93}{100}$ acres; all of which lands are contained within township twenty-two, range nine, west, of Choctaw district, being the quantity above described, according to the surveyor's estimate, more or less, and were held and owned by the said George W. Adams, in fee simple, at the time he executed the deed of mortgage aforesaid. Your orators further allege, that said deed of mortgage was on said 7th day of Dec'r, 1837, duly acknowledged by said George W. Adams to be his act and deed, before Thomas W. Endicott, clerk of the probate court for the county of Washington, in the State of Mississippi; and on the 23d day of Feb'y, 1838, the same was duly recorded in the clerk's office of the probate court of the county of Bolivar, in the State aforesaid; all of which will more fully and at large appear, by reference to an authenticated copy of said deed of mortgage, and of the certificates thereto attached, and which is herewith filed, marked exhibit A, and is prayed to be taken as a part of this bill. The original of said deed of mortgage is not in your orators' possession, nor do they know where it is. Your orators further show unto your honor, that shortly after the execution of said deed of mortgage, the said Hiram G. Runnels, who is made a defendant hereto, for a valuable consideration assigned and delivered to them each and all of said three promissory notes, whereby your orators became the holders and proprietors thereof; that the first of said notes, being the one which fell due on the 1st of March, 1839, has been prin-

cipally paid, and for the balance due a new note has been given by the said Runnels to your orators, for the payment of which they look to the personal ability of the said Runnels, and not to the lands conveyed in mortgage as aforesaid. They allege, however, that they still hold the two of said promissory notes, which matured on the 1st day of March, 1840, and on the 1st of March, 1841; that said notes are due and remain wholly unpaid. That, as the assignees and holders of said notes, they [are] entitled to look to the lands conveyed in mortgage as aforesaid for their payment. They state that they are desirous of availing themselves of the security furnished to them by said deed of mortgage, and of having said mortgage foreclosed, and the lands therein described sold for the satisfaction of said notes. They will, in due time, file the original of said two promissory [notes,] marked as exhibits B and C, and they pray that they may be taken as a part of this bill. In tender consideration whereof, and inasmuch as your orators are remediless at law, and only relievable in this honorable court, they pray that the State's most gracious writ of supœna may issue, directed to the said George W. Adams and Hiram G. Runnels, who are made defendants hereto, whereby they may be compelled, at a certain time, and under certain penalties, to appear before your honor, and answer upon his corporeal oath, each and all the several allegations of this bill, in as full and ample a manner as if they had been specially interrogated thereto; and upon a final hearing of this cause, may your honor decree, that the equity of redemption of the said George W. Adams in and to said lands be forever barred and foreclosed, and that the said lands, or so much thereof as may be required, be sold to pay and satisfy the principal and interest of said two promissory notes; and grant to your orators all such other and further relief as to equity and justice may belong; and they, as in duty bound, will ever pray, &c.

HARRISON & HOLT,
*Solicitors for Compl'ts.*

STATE OF MISSISSIPPI, *Warren county:*

John L. Harris makes oath that the statements contained in the foregoing bill, so far as made from his own knowledge and that of his co-complainant, John A. Rowan, are true, and so far as made from the information of others, he believes them to be true in substance and in fact.

JOHN L. HARRIS.

Subscribed and sworn to before the undersigned, a justice of the peace for the county and State aforesaid, this 8th day of April, 1841.

JOHN F. PIERSON, *J. P.*

Justices charges, $4.

*Exhibits.*

Dolls. 8,671 $\frac{33\frac{1}{3}}{100}$.

On or before the first day of March, eighteen hundred and forty-one, I promise to pay H. G. Runnels, or order, eighty-six hundred and sev-

enty-one $33\frac{1}{100}$ dollars, negotiable and payable at the Planter's Bank of Natchez, Mississippi. Value received, this 7th December, 1837.

GEO. W. ADAMS.

(Endorsed.) For value received, I transfer and assign over to Rowan and Harris, the within note for $8,671 33⅓; said note is secured by mortgage of record on lands in Bolivar county, Mississippi, and I vest the right to control said mortgage in said Rowan and Harris. Given under my hand, this 22d January, 1838.

H. G. RUNNELS.

Cr. Rowan and Harris.

Dolls. 8,671 $33\frac{1}{100}$.

On or before the first day of March, eighteen hundred and forty-one, I promise to pay H. G. Runnels, or order, eighty-six hundred and seventy-one $33\frac{1}{100}$ dollars, negotiable and payable at the Planter's Bank, Natchez, Mississippi; value received, this 7th December, 1837.

GEO. W. ADAMS.

(Endorsement.) For value received, I transfer and assign over to Rowan and Harris, the within note for $8,671 33⅓; said note is secured by mortgage of record on lands in Bolivar county, Mississippi, and I vest the right to control said mortgage in said Rowan and Harris.

Given under my hand, this 22d January, 1838.

H. G. RUNNELS.

Cr. Rowan and Harris.

UNITED STATES OF AMERICA,
*State of Mississippi, Adams county:*

By this public instrument of protest, be it known, that on this 4th day of March, 1841, at the request of Thomas Henderson, esq., cashier, the holder of the original note, of which a true copy is hereon endorsed, I, James K. Cook, justice of the peace and ex-officio notary public, residing in the city of Natchez, qualified according to law, went to the Banking house of the Planter's Bank of the State of Mississippi, and presented said note to the teller of said bank, and demanded payment of the same, which was refused. Whereupon I, the said justice of the peace and ex-officio notary public, at the request aforesaid, do hereby solemnly and publicly protest the said note, as well against the drawer thereof as against the acceptors, endorsers, and all who are or may be concerned therein, for all exchange, re-exchange, cost, charges, damages and interest, suffered or to suffer, for the non-payment of said note.

Thus solemnly done and protested.

Given under my hand and the seal of my office at Natchez,
[L. S.] the day and year above written.

JAS. K. COOK.

*Exhibit* A.

This indenture, made and entered into this 7th day of December, 1837, by and between Geo. W. Adams, of the county of Scott and State of Kentucky, of the one part, and Hiram G. Runnels, of the county of Yazou and State of Mississippi, of the second part, witnesseth: that the said party of the first part, for and in consideration of the sum of one dollar to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath given, granted, bargained, sold, released, conveyed and confirmed, and by these presents doth give, grant, bargain, sell, release, convey and confirm unto the said party of the second part, his heirs and assigns forever, all those lots and parcels of land contained within township No. twenty-two, range nine, west, and known and described as follows, to wit: lot No. two, in section No. 2, containing seventy-eight $\frac{31}{100}$ acres; lot No. six, in section No. two, containing eighty-four $\frac{08}{100}$ acres; lot No. six, in section No. two, containing seventy-five $\frac{89}{100}$ acres; and lot No. seven, in section No. two, containing seventy-six $\frac{10}{100}$ acres; and lot No. eight, in section No. 2, containing seventy-six $\frac{10}{100}$, and lot No. five, in section No. three, containing seventy-seven acres; and lot No. six, in section No. three, containing seventy-seven acres; and lot No. seven, in section No. three, containing seventy-seven acres; and lot No. eight, in section No. three, containing seventy-seven acres. Also, section No. four, containing six hundred and forty-eight $\frac{16}{100}$ acres; and fractional section No. eleven, containing twenty-one $\frac{67}{100}$ acres; and fractional section No. ten, containing twelve $\frac{50}{100}$ acres; and fractional section twelve, containing four hundred and ninety $\frac{93}{100}$ acres; all of which above described land is contained within township twenty-two, range nine, west, of Choctaw district, being the quantity above described, according to the surveyor's estimate, more or less, together with all and singular, the appurtenances, hereditaments, privileges and advantages whatsoever, unto the above described premises belonging, or in any wise appertaining. To have and to hold the above described premises unto the said party of the second part, his heirs and assigns, forever, against the claims of all and every person or persons whomsoever. And the title to the above described premises the said party of the first part doth bind himself, his heirs, executors and administrators, to warrant and forever defend unto the said party of the second part, in fee simple, forever.

Nevertheless, upon the following conditions: that, whereas the said party of the first part is indebted to the said party of the second part in the sum of twenty-six thousand and thirty-four dollars, which is evidenced and payable as follows, to wit: by three several promissory notes of even date, herewith drawn by the said party of the first part, payable to the said party of the second part, each for the sum of eight thousand six hundred and seventy-one and thirty-three and one-third hundredths dollars, all negotiable and payable at the Planter's Bank at Natchez, Mississippi. The first due and payable on the first day of March, 1839.

The second due and payable on the first day of March, one thousand eight hundred and forty. The third due and payable on the first day of March, one thousand eight hundred and forty-one. Should the said party of the first part fail to pay either one or more of the said notes at the times and place therein specified, then this obligation to be in full force, both in law and equity, otherwise to be null and void. In testimony whereof the said George W. Adams hath hereunto subscribed his name and affixed his seal, this day and date above written.

(Signed) GEO. W. ADAMS, [L. S.]

Witness: T. W. ENDICOTT.
Witness: W. P. STONE.

STATE OF MISSISSIPPI, *Washington county:*

Personally appeared before me, Thomas W. Endicott, clerk of the probate court in and for the county and State aforesaid, George W. Adams, the grantor, whose signature is attached to the foregoing deed of mortgage, and acknowledged that he signed, sealed, and delivered the same as his act and deed, for the uses and purposes therein expressed, and was willing the same should *should* be certified to the proper office for record. Given under my hand and seal of office, this 7th day of December, 1837. T. W. ENDICOTT, *Clk.*

THE STATE OF MISSISSIPPI, *Bolivar county:*

I, Andrew B. Dodd, clerk of the probate court of said county, do certify that the foregoing instrument of writing and certificate were, on the 23d day of February, A. D. 1838, filed in my office for record, and that the same have been duly recorded in book A, pages 126 and 127.

Given under my hand and private seal, (there being no seal of said court provided,) this 27th day of February, A. D. 1838.

Test: A. B. DODD, *Clerk*, [L. S.]

THE STATE OF MISSISSIPPI, *Bolivar county, to wit:*

I, Andrew B. Dodd, clerk of probate court of said county, do certify that the foregoing is a true copy from the records of deeds in my office. Given under my hand and private seal, (there being no seal of office,) this 30th day of March, A. D. 1840.

Teste: A. B. DODD, *Clerk*, [L. S.]

*Spa.*

And afterwards, to wit, on the 9th day of April, A. D. 1841, there issued out of said court the following writ:

SUPERIOR COURT OF CHANCERY,
*Of the State of Mississippi, to wit:*

The State of Mississippi, to Hiram G. Runnels, greeting:

For certain causes offered before us in our superior court of chancery, we command and strictly enjoin you that, laying all other matters aside, and notwithstanding any excuse, you personally appear at a su-

perior court of chancery, to be holden at the court room, in the town of Jackson, on the first Monday in July next ensuing, to answer to a bill of complaint exhibited against you by John A. Rowan and *and* John L. Harris, complainants in our said court, and further to do and receive what our said court shall have considered of in this behalf; and this you shall by no means omit under the penalty of one hundred dollars, as well as the consequences that may fall thereon, and have then there this writ.

Witness the honorable Robert H. Buckner, chancellor of the State of Mississippi, at the town of Jackson, the first Monday in December, in the year of our Lord one thousand eight hundred and forty, and of the sovereignty and independence of the United States of America the 65th.

[L. S.]

Issued the 9th day of April, 1841.

To the sheriff of Hinds county, to execute and return.

R. L. DIXON, *Clk.*

*Endorsed.* "Received, April 12th, 1841.

D. THOMAS, *Sh'ff.*

Executed on Runnels, April 12th, 1841.

D. THOMAS, *Sh'ff.*
By J. W. DOUGHERTY.

And afterwards, to wit, on the 29th day of April, 1841, came the defendant, Hiram G. Runnels, by his solicitors, Rucks and Yergers, and filed in said court his answer to the bill of complaint of Rowan and Harris, which answer is in the words and figures following, to wit:

The separate answer of Hiram G. Runnels to the bill of complaint, filed in this honorable court by Rowan and Harris, against himself and George W. Adams: This respondent, now and at all times, saving, &c. the full benefit of exceptions to the many errors, &c. in complainant's bill contained, for answer to such parts as he is advised it is material he should answer unto, says that it is true, as stated in complainant's bill, that on the 7th day of December, in the year 1837, the co-defendant, Adams, was indebted to this respondent in the sum of $26,034, and in liquidation of that sum executed his notes to this respondent for the sums and in the manner mentioned in said bill. Respondent also admits that said Adams, to secure the payment of said notes, executed the mortgage mentioned in the bill to this respondent; and respondent admits that exhibit A is a true copy of said mortgage. Respondent also admits, that after the execution of the notes and mortgage aforesaid, he assigned the notes, to secure which it was given, to the complainants. But respondent is advised, and so charges, that the consideration for which said assignment was made, was illegal and invalid, and such as by the laws of the land is not such a consideration as gives the complainant any right of action against this respondent. Respondent also admits, that nearly the whole of the note which fell due in 1839, has been paid by him to Rowan and Harris, and for the part not paid that he executed a new note to them, by which, in law, said note is satisfied. Re-

spondent further admits, that complainants are now the holders of the two other notes, and that the same are due and unpaid, as far as respondent has any knowledge; but respondent is advised, and, therefore, denies the rights of complainants to foreclose the mortgage aforesaid.

Respondent states, that his co-defendant, Adams, became in debt to this respondent for the sum, and in the manner aforesaid, by reason of a purchase of a tract of land, which he made of respondent, which is the same tract of land mentioned in the mortgage aforesaid. Respondent states, that he made said Adams a deed for said land, which said Adams lost or had stolen from him, and the same never has been recorded. Respondent states that, some time in the winter of 1838, or early in the spring of 1839, and after the transfer of the notes to complainant, he rescinded his contract with the said Adams, and agreed that the said Adams should not be held liable any further upon the notes aforesaid, and that the land aforesaid, mentioned in said mortgage, should revert to this respondent, and revest in him, and the same has [been] the property of this respondent, until the sale hereafter to be mentioned. Respondent says, that since the rescision of this contract with the said Adams, he sold the land aforesaid to the firm of Burke, Watt & Co. or to John Watt, and has received payment therefor from them, in whom the title to said land now is, as respondent has been advised. The members of the firm of Burke, Watt & Co. are, as respondent believes, Glendy Burke, John Watt, and another, whose name respondent does not recollect; and respondent informed the said John Watt that the claim of complainants, which he had been informed they would set up by virtue of said mortgage, could not be sustained. Respondent further states, that the sole and only consideration ever given him by the said Rowan and Harris, for the transfer and assignment of the notes aforesaid, was the following, that is to say: the said complainants were partners, as they allege, doing business under the firm name of Rowan and Harris; but they were engaged in no trade or occupation recognised by the law, but in the illegal and invalid business of importing for sale, into the State of Mississippi, and selling therein slaves, contrary to the laws and policy of said State; and being so engaged in said business, the said Rowan and Harris, sometime in the year of 1836, introduced and imported into this State, as merchandise and for sale, a large number of slaves, and having so introduced them, the said complainants, in pursuance of such design, offered to sell, and did sell, said slaves to this respondent, in the State of Mississippi, sometime in the year aforesaid; all of which actings and doings took place since the first day of May, in the year 1833, and were done in violation of the constitution and laws of the State. Respondent says, that for said slaves he agreed to give to complainants the sum of eighteen thousand dollars, or thereabouts, and in payment therefor, executed his bill to complainants. The number of slaves so sold to respondent, was eighteen or *or* thereabouts, and at the time of the sale of the same, complainants stated to respondent that they would not warrant said slaves, as by so doing they frequently became involved in law suits; but they represented said slaves to be sound and healthy, so far as they had any knowledge in relation thereto.

These representations respondent believes to have been falsely and fraudulently made, inasmuch as out of the eighteen slaves bought by respondent of said complainants, seven of them, whose names, to the best of respondent's recollection, were Stephen, William, Nathan, Anthony, Jack, Jane and Dick, died of diseases which they had when respondent bought them, in about three months after said purchase, except Stephen, who lingered longer. Two other of said slaves, whose names, to the best of respondent's recollection, were Washington and Louisiana, also died in about six months, but not of diseases which they had, as respondent believes. Respondent further states, that he discharged and took up the bills so given by him as aforesaid, for said slaves, by transferring and assigning, in the manner mentioned by complainants in their bill, the notes of the said Adams, secured by the mortgage aforesaid. And respondent says, that the sole and only consideration for which said transfer and endorsement was made, was the liquidation of the notes given by him for the slaves aforesaid. Respondent says, that he has already paid in money to the said Rowan and Harris, in consideration of the purchase of said slaves, the sum of six thousand dollars, or thereabouts. The note given by respondent for the sum of $2,950 70 cents, and given as a means of discharging respondent's liability on said endorsement of the note of Adams, which fell due in 1839, bore date on the 27th day of March, 1839, and was payable on the first day of March, 1840, and was founded upon no other consideration than as above stated. Respondent would further state, that upon the endorsement by him of the note of Adams falling due in 1840, and upon the note given in part liquidation of the pretended claim against him, due on his endorsement of the note falling due in 1839, suit has been brought by complainant, in the circuit court of the United States at Jackson, against this respondent. Respondent is advised, that by the laws of the land he is not bound to pay any thing to said complainants on his endorsement as aforesaid, or on the note made by him as aforesaid, and that this honorable court will rescind the contract made between this respondent and said complainants, will cancel the notes and endorsements made by respondent, in consideration of the illegality of the contract aforesaid, and of the fraud practised upon this respondent. This respondent does not wish to do any thing in this business but what is fair and right. Respondent has been unable to procure any redress whatever for the loss of the slaves as aforesaid from said complainants, and is, therefore, compelled to seek relief from this honorable court, being ready to do in the premises whatever said court may decree him to be bound to do in equity and good faith. In tender consideration, &c. your respondent prays that this answer may be taken and construed to be a cross bill, and that the said Burke, Watt & Co. the said complainant, and the said Adams be made defendants thereto, and that supœna issue, &c. and that they be compelled to answer, all and singular, the allegations in this cross bill contained, as fully as if they were again repeated and they interrogated thereto. Respondent prays that the note for $2,950 70 dollars, made by him as aforesaid, and his endorsements

on the notes of Adams, be annulled and vacated, and the contract for the slaves aforesaid be declared to be null and void. Respondent further prays that the complainants, their agents and attorneys, be perpetually enjoined from further prosecuting the suits aforesaid now pending on said notes and endorsements, and any other suits that may hereafter be brought upon the same. Respondent also prays that the notes and endorsements aforesaid be cancelled, and any attempt on the part of complainants to foreclose this mortgage be enjoined. In the mean time respondent prays for the State's writ of injunction, &c. enjoining and restraining the complainants and their attorney from further prosecuting the suits now pending on said notes and endorsements, and also from commencing any other suits upon the same, and likewise from transferring or passing out of their hands either of the notes aforesaid; or, if mistaken in the relief asked for, respondent prays for such additional and other relief as in equity he is entitled to receive; and as in duty, &c.

RUCKS & YERGERS, *Sols.*

STATE OF MISSISSIPPI, *Hinds county:*

This day, Hiram G. Runnels personally appeared before me, and made oath that the facts set forth in the foregoing answer, and stated of his own knowledge, are true; and those stated on the information of others, he believes to be true. H. G. RUNNELS.

Sworn to and subscribed before me, this 29th day of April, 1841.

J. P. OLDHAM, *J. P.*

And afterwards, to wit, at the May rules, 1841, of the chancery court, the following order was made and entered on the minutes:

Upon opening the matters of this bill, and it appearing that the defendant, George W. Adams, is not an inhabitant of this State, but resides beyond the limits thereof, so that the ordinary process of this court cannot be executed upon him: It is therefore ordered, that unless the said defendants appear before the chancellor, at the court room, in Jackson, the first Monday in July next, and plead answer or demur to said bill of complaint, the several allegations thereof will be taken for confessed, and such order and decree made therein as the chancellor may deem equitable and just. It is further ordered, that a copy of this order be inserted in the "Vicksburg Whig," once a week for two months successively.

And afterwards, to wit, on the 10th day of June, A. D. 1841, came the complainants, Rowan and Harris, by their solicitors Harrison and Holt, and filed in said court their amended bill against Runnels and Adams, which amendment is in the words and figures, and of the tenor following:

*To the honorable Robert H. Buckner, chancellor of the State of Mississippi:*

Your orators, John A. Rowan and John L. Harris, co-partners in business under the name and style of Rowan and Harris, by way of amend-

ment to their original bill herein exhibited against Hiram G. Runnels and George W. Adams, would respectfully represented that they have been informed that Glendy Burke, John Watt and Louis De Salles, merchants, doing business under the name and style of Burke, Watt, & Co., claim title to or interest in the tract of land described in said mortgage marked Exhibit . That this interest or title is claimed either severally by the said John Watt, or by him jointly with his said co-partners, Glendy Burke and Louis De Salles; and that this interest or title is professed to be derived from a sale of land made by said Hiram G. Runnels to John Watt, or to Burke, Watt & Co. Your orators allege, that if any such sale has taken place, it was made long after the execution and registration of said deed of mortgage, and necessarily subject thereto; that at the time of such sale it was well known to the said Hiram G. Runnels, as well as to said Glendy Burke, John Watt and Louis De Salles, that your orators were the holders of said promissory notes, and that the payment of the same was secured by this deed of mortgage aforesaid. That they had not merely such legal notice as the registration of said mortgage furnished, but had notice, in fact, of the lien of your orators upon said land. Your orators, therefore, insist that said sale, by the said Runnels, cannot affect their right as the bona fide holders of said promissory notes. Your orators have been informed that the original deed made by Hiram G. Runnels to George W. Adams, conveying said tract of land, has been lost or destroyed, and has not been recorded. Whether this information be correct or not, they know not.

They require the said George W. Adams to produce said deed to this honorable court, if it be in his possession or within his control; and if it should appear, upon the final hearing of this cause, that said deed has been lost or destroyed, your orators pray that the same may be supplied and set up by proper decree, and that the said Runnels may be compelled to execute a new deed to the said land, either to the said George W. Adams or to the purchaser of the said mortgaged premises, should the same be decreed to be sold as herein prayed for. Your orators state, that the said Glendy Burke and Louis De Salles are citizens and residents of the State of Louisiana. They pray that the said Glendy Burke, John Watt and Louis De Salles may be made defendants hereto, and may be compelled, by proper process, to appear and answer the several allegations of this amended, and also of the original, bill herein; and upon a final hearing, may your honor grant the relief prayed for in the original bill and amended bill, and all such other and further relief as to equity and justice may belong; and they, as in duty bound, will ever pray, &c.

HARRISON & HOLT, *Solt'rs for Compl'ts.*

STATE OF MISSISSIPPI,
*Warren circuit court :*

John L. Harris makes oath that the statements contained in the foregoing amended bill are true, to the best of his knowledge, information, and belief. JOHN L. HARRIS.

Sworn to and subscribed before me, the undersigned justice of the peace for county and State aforesaid.

JNO. F. PEARSON, *J. P.*

Justice's fees, 37½ cents.

And on the 10th day of June, A. D. 1841, there issued out of said court the following writ, to wit:

SUPERIOR COURT OF CHANCERY,
*Of the State of Mississippi, to wit:*

The State of Mississippi to John Watt, greeting:

For certain causes offered before us in our superior court of chancery of the State of Mississippi, we command and strictly enjoin you, that laying all other matters aside, and notwithstanding any excuse, you personally appear at the superior court of chancery, to be holden at the court room, in the city of Jackson, on the first Monday in July next ensuing, to answer an original and amended bill of complaint, exhibited against you and others, by Rowan and Harris, complainants in our said court: and further to do and receive what our said court shall have considered of in this behalf, and this you shall in no wise omit under the penalty of one hundred dollars, as well as the consequences that may fall thereon; and have then there this writ.

Witness the honorable Robert H. Buckner, chancellor of the State of Mississippi, at the city of Jackson, the first Monday in December, in the year of our Lord one thousand eight hundred and forty, and of the sovereignty and independence of the United States of America the sixty-fifth.

Issued the 10th day of June, 1841.

R. L. DIXON, *Clk.*
By W. T. FOUNTAIN, *D. C.*

To the sheriff of Adams county to execute and return.

(*Endorsed.*) Received, 17th June, 1841.

S. B. NEWMAN, *Sh'ff.*

Executed, 21st June, 1841.

S. B. NEWMAN, *Sh'ff.*
By JAMES J. BARD, *D. S.*

Fee paid, $1 75.

And afterwards, to wit, at the July rules, 1841, of the chancery court, the following order was made and entered on the minutes of the court, to wit.

Upon opening the matters of the original and amended bills in this case, and it appearing that the defendants, George W. Adams, Glendy Burke and Louis De Salles are not inhabitants of this State, but reside beyond the limits thereof, so that the ordinary process of this court cannot be executed on them: It is therefore ordered, that unless the said defendants, George W. Adams, Glendy Burke and Louis De Salles appear before the chancellor, at the court room, in the town of Jackson, on or before the first Monday in January next, and plead answer or demur to said original and amended bills, the several allegations there-

of will be taken for confessed as to them, and such order and decree made therein as the chancellor may deem equitable and just. It is further ordered, that a copy of this order be inserted in the "Vicksburg Whig," once a week, for two months successively.

And afterwards, to wit, on the 19th day October, A. D. 1841, came the defendants, John A. Rowan and John L. Harris, copartners in business under the name and style of "Rowan and Harris," to a cross bill of complaint, exhibited against themselves and others, in the superior court of chancery of the State of Mississippi. These respondents reserving all right of exceptions to the many errors and insufficiences in said cross bill of complaint contained, for answer thereunto, as unto so much thereof as they are advised it is material and important for them to answer, respond and say: that on the 23d day of February, 1836, they sold to the said Hiram G. Runnels, M. T. Rodgers and Markham and Galloway, fifty-seven slaves for the aggregate sum of fifty-three thousand one hundred and seventy-five dollars; the prices at which said slaves were respectively estimated in said contract of sale, together with the age and description of each, are correctly set down in a schedule of the same, which was signed by the said parties and delivered to these respondents at the time of closing the contract, and is now filed herewith, marked exhibit (No. 1,) and is prayed to be taken as a part of this answer. They state that the value of that portion of said slaves allotted to the said Runnels amounted, as well as they now recollect, to about the sum of eighteen or twenty thousand dollars or upwards. That for this sum he made his several bills of exchange, which were accepted and endorsed by the other parties and delivered to these respondents in payment. That when said bills, or a part of them, matured, they were protested for non-payment, and suit was instituted thereon by respondents, in the circuit court of the United States for the district of Mississippi, which suits were defended by said Runnels and the other parties, on the ground of alleged unsoundness of a number of said slaves, and of the pretended concealment of such unsoundness by respondents at the time of the sale. Before said suits, however, were finally tried and disposed of, the controversy was compromised and settled between respondents and said Runnels, and the other parties to the bills, and in pursuance of said settlement respondent received from said Runnels the several notes of George W. Adams, referred in their original bill herein, in lieu of said bills of exchange which were cancelled and delivered. Respondents allege that this arrangement was made at the special request of said Runnels, and for his particular accommodation, and was regarded as a final and satisfactory adjustment of all matters of dispute between them growing out of the sale of said slaves. That they were induced to accede to this compromise and accept said notes in lieu of the bills, in consequence of their being well secured by the deed of mortgage referred to as exhibit A, in their original bill herein; respondents little thinking at the time that any attempt would ever be made to deprive them of the security which said mortgage furnished, by cancelling the contract in which it had its origin.

Respondents admit, that at the time of the sale of said [slaves] they expressly refused to warrant them as sound. They deny that they made any representation in regard to the soundness or unsoundness of said slaves, except such as is contained in exhibit No. 1, herewith filed, in which the particular infirmity or defect of each *sale*, so far as known to respondents, is noted and was fully presented to the consideration of said Runnels. The said Runnels, Rogers and Galloway and Markham examined said slaves for themselves and purchased them upon their own judgment, uninfluenced by any assurances or representations of respondents, who expressly declined incurring any responsibility in the matter. And the said parties, after having examined said slaves and satisfied themselves as to their condition, agreed to receive them as they stood, without warranty or representation, "Taking them in the language of said contract," "*as sound if they be sound, and unsound if such be their condition*," all of which fully appears by reference to exhibit No. 1. Respondents deny in the most express terms having made any false or fraudulent representations in regard to the soundness or unsoundness of said slaves. If any of them were unsound or defective, besides those noted as such in exhibit No. 1, it was unknown to respondents, nor do they believe such additional unsoundness existed at the time of the sale, whatever may have occurred afterwards; but lest others of said slaves might have been unsound at the time of the sale, and such unsoundness have been unknown to respondents, they, out of abundance of caution, refused to make either warranty or representations, except that contained in exhibit No. 1, insisting that said parties should purchase, upon their own view and judgment, which they did, and which they were competent to do. Respondents know nothing of the subsequent death of the slaves named by said Runnels, and require full proof thereof.

They insist, however, even if said slaves had been unsound, and if said Runnels had, in consequence, just cause of action against these respondents, that such cause of action being, as it must have been, if it existed, fully known to Runnels, was compromised and adjusted in the settlement which took place between them, whereby the bills of exchange originally given were cancelled, and the notes of George W. Adams received in lieu thereof, which arrangement was made at the urgent request of Runnels, and proceeded upon the express and avowed ground of being a full accord and satisfaction of all matters of controversy between, growing out of the sale of said slaves. Respondents admit that said slaves were introduced by them from the State of Virginia into the State of Mississippi for sale and as merchandise, since the 1st day of May, 1833. They deny, however, that in thus introducing them it was their intention to violate the constitution, laws, or policy of the State of Mississippi. They acted in accordance with the usages of the time, and brought into this State, for market, what all her citizens and the officers of her government seemed not only willing but anxious to purchase. They are advised and believe, that the fact of such slaves having been thus introduced by them constitute no bar to the relief

which they now seek. They ask no decree against the said Runnels, but against George W. Adams, the drawer of the notes, which were executed upon a consideration sound, unimpeached and unimpeachable, and their validity could not be affected even if the consideration of Runnel's endorsements was vicious, which it is denied to be. Respondents have been informed and believe, and charge the truth to be, that said Runnels, shortly after the purchase of said slaves, sold the same, or the most of them, and that he has not been for years the owner thereof. He is, therefore, seeking a cancelment of his contract with respondents without having it in his power to return said slaves to them, and, indeed, without offering either to return said slaves, account for their value, or their reasonable hire. Respondents protest against a cancelment of said contract upon these or upon any other terms. They admit that they have sued the said Runnels in the circuit court of the United States for the southern district of Mississippi, on the note for $8,671 $^{33}/_{100}$, and also on his endorsement of the note of $8,671 $^{33}/_{100}$, which suits are still pending and undetermined, and they respectfully question the power of this honorable court in any manner, by injunction or otherwise, to arrest the prosecution of said suits. Respondents admit that the consideration of the indebtedness of George W. Adams to H. G. Runnels to the amount of $26,034, was the purchase by the former of the latter of the tract of land particularly described in said deed of mortgage, filed as exhibit A, with their original bill herein. They admit that Runnels, at the time of the sale of said land to Adams, conveyed the same to him by deed regularly and form*erly* executed and delivered. They know nothing of said deed having been lost or destroyed, or of its not having been recorded. They intend making diligent search for the original of said deed, and hope to obtain possession of it; and should they do so, they will in due time file it as an exhibit in this cause. But if said deed is lost or destroyed, they pray that this honorable court will, by proper decree, supply and set the same up by compelling the said Runnels to execute a new deed for said land either to George W. Adams or to the purchaser of the mortgaged premises, should they be decreed to be sold as herein prayed for. Respondents know nothing of said Runnels having cancelled or attempted to cancel said contract for the sale of said land to George W. Adams. They deny that he had any power to make such cancelment to the prejudice of their rights as holders of said promissory notes. That, at the time said cancelment took place, respondents held each of said notes of $8,671 $^{33}/_{100}$, is a fact which was then well known to the said Runnels and Adams; and any attempt at a rescision of said contract, under such circumstances, was a perfect nullity, so far as respondents are concerned, they having never, in any manner, assented thereto.

Respondents have no knowledge of said Runnels having sold said land to John Watt, or Burke, Watt & Co., which firm consisted of the said *John Watt, Glendy Burke and Louis De Salles;* if any such sale has been made, it can in no manner affect the rights of respondents, as they are advised and believe. They allege that if said land has been

purchased from Runnels, either by John Watt, or by Burke, Watt and Co., such purchase was made with a full knowledge, on the part of the purchaser or purchasers, that your respondents held said promissory notes, and their payment was secured by a mortgage upon the said land. They had not only the legal notice which a registration of said mortgage furnished, *but they had notice in fact*, and, therefore, contracted at their own hazard and subject to the rights of respondents. Respondents insist that the matters and things set forth in the cross bill of said Runnels constitute no bar to the relief sought in their original bill herein. They protest against a cancelment of said contract and against a cancelment of Runnels' endorsement of said notes to them. And having fully answered, they pray that said cross bill may be dismissed, &c.

JOHN L. HARRIS.
HARRISON & HOLT,
*Sols. for respondents.*

STATE OF MISSISSIPPI, *Warren county :*

John L. Harris makes oath before the undersigned, a justice of the peace for the county and State aforesaid, that the statements contained in the foregoing answer, so far as made from his own knowledge, are true ; and so far as made from the information of others, he believes them to be true in substance and in fact.

JOHN L. HARRIS.

Sworn to and subscribed before me, this 8th day of June, 1841.
JNO. F. PIERSON, *J. P.* [L. S.]

Justice's fees, 37½ cents.

STATE OF VIRGINIA, *Campbell county :*

John A. Rowan makes oath before me, Henry J. Brown, a duly commissioned and acting justice of the peace for the county of Campbell and State of Virginia, that the statements contained in the foregoing answer, so far as made from his own knowledge, are true; and so far as made from the information of others, he believes them to be true in substance and in fact.

JOHN A. ROWAN.

Sworn to and subscribed before me, on this 2d day of October, 1841.
HENRY J. BROWN, *J. P.* [L. S.]

*Exhibit No.* 1.

| | | | |
|---|---|---|---|
| George White, | 20 | - | $1,300 |
| Burton Bradfute, | 16 | - | 1,200 |
| Spot Rhodes, | 21 | - | - |
| Rachel and child, | 20 | - | 2,500 |
| Burwell Brown, bad feet, | 33 | - | 1,100 |
| Washington Coles, | 28 | - | 1,200 |
| Billy Buckner, | 33 | - | 1,200 |
| Anderson Beck, | 20 | - | 1,250 |
| Tom Leggon, | 23 | - | 1,250 |

Exhibit No. 1—Continued.

| | | |
|---|---|---|
| Ellis Goodwin, | 19 | $1,250 |
| Nathan Hunter, | 19 | 1,100 |
| Amos Davis, | 19 | 1,250 |
| Peyton Board, (not quite well,) | 30 | 1,100 |
| Archy Mahon, | 30 | 1,000 |
| Stephen Jewell, | 21 | 1,250 |
| Berry Dunn, one short leg, | 24 | 1,150 |
| Fountain Davis, | 19 | 1,200 |
| George Davis, | 23 | 1,200 |
| Parker Brown, | 35 | 800 |
| Winston Davis, | 17 | 1,100 |
| Jack Lackland, | 18 | 1,200 |
| Overton Davis, | 17 | 1,100 |
| Peter Walton, | 17 | 1,150 |
| Dick Harris, | 15 | 1,000 |
| William Otey, | 14 | 950 |
| Spencer Mennis, | 15 | 1,000 |
| Joshua Coles, | 13 | 900 |
| Isaac Jones, | 13 | 900 |
| Fountain Lacy, | 13 | 900 |
| Addison Hart, | 11 | 800 |
| James Waite, | 11 | 800 |
| Gaspar Hunter, | 11 | 800 |
| Andrew Hawkins, not well, | 20 | 1,200 |
| Jim Leftwick, not well, | 28 | 1,100 |
| Jack Garret, ruptured, | 45 | 800 |
| Nat Duke and James Duke, sick, | | |
| Abbey Hart, | 28 | 900 |
| Jane Hart, | 36 | 600 |
| Elsey Tucker, | 18 | 900 |
| Winey Smithson, | 16 | 900 |
| Lucinda Ridgway, | 16 | 900 |
| Sally Nelson, | 16 | 900 |
| Mary Davis, | 16 | 900 |
| Molly Davis, | 16 | 900 |
| Margaret Snody, | 14 | 850 |
| Eliza Randolph, sickly, | 14 | 750 |
| Louisa Duke, | 14 | 850 |
| Rilda Davis, | 13 | 800 |
| Viney Davis, | 14 | 800 |
| Betsey Holmes, | 13 | 800 |
| Sally Seay, | 14 | 850 |
| Eliza Thompson, deficient in intellect, | 15 | 620 |
| Milly Mahen, | 14 | 850 |
| Louisa Whittle, | 24 | 1,125 |
| Henrietta Whittle, | 6 | |

We have this day purchased of Rowan and Harris the foregoing list of slaves, and agree to take them, as sound if they be sound, and unsound, if such be the condition of the slaves.

Given under our hands, this 23d February, 1836.

M. T. RODGERS,
H. G. RUNNELS,
MARKHAM & GALLOWAY.

SUPERIOR COURT OF CHANCERY,
*Of the State of Mississippi:*

I, Richard L. Dixon, clerk of the court aforesaid, do hereby certify, that the foregoing twenty-five pages contain a complete and correct transcript of the record of the cause first therein named, so far as the suit has progressed.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the court at Jackson, the 16th day of Novem-
L. S. ber, 1841.

Att. R. L. DIXON, *Clk.*

Which was all the evidence in the cause. Whereupon the defendant moved the court to instruct the jury, that if they believed, from the evidence, that the original consideration of the note sued on was the sale by plaintiffs to defendant of slaves introduced into the State of Mississippi for sale and as merchandise by plaintiffs, since the first day of May, 1833, that then said note was void, and they should find for the defendant. Which instruction the court gave to the jury as moved for by the defendant. To the giving of which instruction the plaintiffs then and there excepted, and prayed that their exception might be signed, sealed, and made a part of the record in this case; which is accordingly done, before the jury retired from the box to consider of their verdict. (Signed) J. McKINLEY, [L. S.]

Therefore, it is considered by the court, that the said plaintiffs take nothing by their bill, but for their false clamor be in mercy, &c.

And that the said defendant go hence without day, and recover against the said plaintiffs his costs by him about his defence in this behalf expended.

UNITED STATES OF AMERICA,
*Southern district of Mississippi:*

Circuit court of the United States:

I, William H. Brown, clerk of said court, do hereby certify, that the foregoing pages contain as full, true, and complete a transcript of the record of the judgment in the case therein named as the same now remains of record in my office.

In testimony whereof I have hereunto set my hand and affixed the
[L. S.] seal of said court, this 17th day of October, A. D. 1842.

W. H. BROWN, *Clk.*

ROWAN AND HARRIS
vs.
H. G. RUNNELS. } *Citation.*

UNITED STATES OF AMERICA, *ss :*

To Hiram G. Runnels or Messrs. Rucks and Yerger, his attorneys at law, greeting :

You are hereby cited and admonished to be and appear at a supreme court of the United States, to be held at Washington, on the second Monday in January next, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the ninth circuit and district of Mississippi, wherein John A. Rowan and John L. Harris, partners under the firm of Rowan and Harris, are plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable John McKinley, one of the judges of the circuit court of the United States for the district of Mississippi, this
[L. S.] 14th day of November, in the year of our Lord one thousand eight hundred and forty-two, and in the 67th year of the independence of the United States.

J. McKINLEY.

We acknowledge service of the within citation.

Nov. 15, 1842. RUCKS & YERGER,
*Attorneys for Runnels.*

Filed 22d December, 1842.